

# Lancaster v. City of Phoenix

United States District Court for the District of Arizona

March 9, 2026, Decided

No. CV-25-03200-PHX-DWL

## Reporter

2026 U.S. Dist. LEXIS 47590 \*; 2026 LX 147992

Chad Lancaster, Plaintiff, v. City of Phoenix, et al.,  
Defendants.

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## Opinion

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[\*1] ORDER

Chad Lancaster ("Plaintiff"), a firefighter-paramedic employed by the City of

Phoenix, alleges that he has been subjected to unlawful discrimination based on his race

(white) and gender (male), as well as to unlawful retaliation, in violation of 42 U.S.C.

§ 1981 and Title VII of the Civil Rights Act of 1964. Plaintiff also asserts a state-law claim

for intentional infliction of emotional distress ("IIED").

Now pending before the Court is Defendants' motion to dismiss. (Doc. 8.) For the

reasons that follow, the motion is granted in part and denied in part.

### BACKGROUND

#### I. Factual Allegations

##### A. The Parties

Plaintiff is a "firefighter-paramedic who has served the City of Phoenix Fire

Department with distinction for nearly twelve years,

earning numerous awards and

commendations for his service." (Doc. 1-1 at 2.) Plaintiff is "white" and "male." (*Id.*

¶¶ 89, 111.)

The complaint names two defendants. The first, the City of Phoenix ("the City"),

"operates through its employees, agents, and representatives, including the Phoenix Fire

Department." (*Id.* ¶ 3.) The second, Jason Rideout ("Rideout"), was the Chief of the

Phoenix Fire Department. (*Id.* ¶¶ 5, 6.)

##### B. Plaintiff's Employment History

On January 7, 2013, "Plaintiff was hired by the Phoenix Fire Department." [\*2] (*Id.*

¶ 10.) Plaintiff "served as a move-up Captain for approximately 10 years and worked as a

rover for 11 years." (*Id.* ¶ 12.) Plaintiff "currently holds the position of Firefighter

Paramedic, ARFF." (*Id.* ¶ 11.) Throughout his career with the Phoenix Fire Department,

"Plaintiff has never received any disciplinary actions, write-ups, or customer complaints"

and has received numerous awards and distinctions. (*Id.* ¶¶ 13-15.) Additionally, Plaintiff

"was elected Fire Board Chairman from 2015-2020." (*Id.* ¶ 18.)

##### C. The Challenged Conduct

###### 1. 2021 Captain Promotion Process

In 2021, Plaintiff participated in the City's captain promotion process ("2021

Captain Promotion Process"). (*Id.* ¶¶ 20-28.)

"In preparation" for that process, "Plaintiff dedicated 18 months to studying and

preparing for the examination." (*Id.* ¶ 20.) "Plaintiff scored exceptionally well on the

written examination (94%) and the tactical examination (92%)." (*Id.* ¶ 21.) "Despite his

strong performance on the written and tactical portions, Plaintiff was given only 70% on

the oral interview portion." (*Id.* ¶ 22.)

"Plaintiff believes that he performed better than scored" and alleges that the City's

"agents purposely lowered his score to place [\*3] non-White, non-male, and insider candidates

ahead of him." (*Id.* ¶¶ 23-24.)

Plaintiff alleges that, "[a]s a result of the artificially low interview score, [he] was

placed at #99 on the 2021 Captain's List." (*Id.* ¶ 25.)

"Many of Plaintiff's colleagues, including Fire Chief Mike Duran, called the

interview board on Plaintiff's behalf to place their support behind the Plaintiff." (*Id.* ¶ 26.)

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Plaintiff alleges that his "interview board was changed at the last minute due to an

alleged 'conflict of interest,' resulting in Chiefs Mike Molitor and [Rideout] being placed

on the board" and that "[d]espite the alleged conflict of interest concern, Chief Mike

Molitor had no conflict interviewing his friend and former subordinate Creston Ludlow,

who scored third on the promotional list." (*Id.* ¶¶ 27-28.)

In July 2021, "Assistant Chief Duran . . . contacted Plaintiff stating that he could

not get a straight answer from the interview board regarding Plaintiff's low placement, and

recommended that Plaintiff meet with [Rideout]." (*Id.* ¶ 29.)

On July 6, 2021, Rideout "made several statements to Plaintiff about his low

placement." (*Id.* ¶ 30.) Specifically, Rideout "told Plaintiff that 'the reason you're not [\*4]

being promoted is because no one had heard your name before,' despite the fact 'that

Plaintiff had more Chiefs and Captains call on his behalf than all other candidates

combined.'" (*Id.* ¶ 31.) Rideout "expressed 'doubts' about Plaintiff's resume because it

was 'hands down the best they had seen.'" (*Id.* ¶ 32.)

## 2. 2023 Captain Promotion Process

In 2023, Plaintiff again participated in the City's captain promotion process ("2023

Captain Promotion Process"). (*Id.* ¶¶ 33-38.)

In March 2023, "Plaintiff was forced for a second time onto Chief Molitor[s] and

[Rideout]'s interview board, moments before his interview with another board." (*Id.* ¶ 33.)

Plaintiff alleges that "[t]his was highly irregular and intentional." (*Id.* ¶ 34.)

"On the 2023 promotional process, Plaintiff scored: Written 86%, Tactical 78%, and

Interview 80%." (*Id.* ¶ 35.) Plaintiff believes his "Tactical and interview scores were

altered." (*Id.*)

In July 2023, "Plaintiff's placement on the certified Captain's List was changed

twice, in one week, after the list has been published and certified by City HR." (*Id.* ¶ 36.)

The list was changed "[f]irst from 63 to 65; and then from 65 to 67." (*Id.* ¶ 37.) "Although

the captain promotional process [\*5] ended in the first few days of May 2023, the 'certified' list

was not released until July 2023. City HR was still

making changes to score for the written

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exam (held in March) after the list was certified in July." (*Id.* ¶ 38.)

### 3. Recorded Admissions

On July 18, 2023, "Plaintiff recorded a conversation with [Rideout] in which

Rideout made explicit admissions regarding the use of racial factors in promotional

processes." (*Id.* ¶ 39.) "When asked about DEI, gender and race as factors being used in

the promotional process, [Rideout] confirmed: 'Yes, [i]t's not a rumor.'" (*Id.* ¶ 40.)

Rideout "explained that minorities and women get extra points, but HR/City does that, not

the department. 'I forgot, they have a term for it, that would say how many white males

took the test, how many females took the test, how many black dudes took the test, how

many Asians, how many Mexicans, all that kind of stuff. And they have a factor (The City)

that goes, that ties it into that.'" (*Id.* ¶ 41.)

Rideout also "confirmed that racial adjustments were made to scores" and "revealed

that five factors were used in final scoring: written score, tactical score, oral score,

seniority, and racial/gender factors." (*Id.* [\*6] ¶¶ 42-43.) Rideout additionally "told another

firefighter, Joe Nonno, 'the reason you are not being promoted is because you are a white

guy.'" (*Id.* ¶ 44.)

### 4. List Manipulation

On July 18, 2023, Rideout showed Plaintiff two pieces of paper. (*Id.* ¶ 45.) Rideout

"point[ed] to the middle of the first page and stat[ed] that Plaintiff was 'right there on the

list, surrounded by guys that will be promoted,' and claimed he had no control over where

Plaintiff was moved after the list left their hands." (*Id.*)

On July 20, 2023, "Chief Russ Kirk showed Plaintiff a different list that he stated

he 'was not supposed to be sent' and that Plaintiff was 'sure not supposed to ever see it.'" (*Id.* ¶ 46.) "This second list showed the Plaintiff was moved to third from the bottom of

all interview scores (3rd worst out of all candidates), directly contradicting [Rideout]'s

claim that Plaintiff was in the middle of the first page." (*Id.* ¶ 47.)

5. Meeting With City HR

### 5. Meeting With City HR

On October 6, 2023, Plaintiff met with City HR representative Megan Avalos

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("Avalos"). (*Id.* ¶ 49.)

During the meeting, Avalos "admitted that fire administration held onto the list for

four plus weeks after the last interview was completed, even though [\*7] City/HR repeatedly 4 contacted fire administration and requested the list." (*Id.*) Avalos "stated that she

suspected that scores were being changed and people being moved on the list during this

time" and that "she and City HR were aware the interview questions were leaked." (*Id.*

¶ 51.) Avalos further "acknowledged the existence of discriminatory and retaliatory

cultures in both the Phoenix Police and Fire departments." (*Id.* ¶ 52.) Plaintiff made

Avalos aware that "there was a fear of being assaulted at work or violence towards him on

the fire ground, if it was made aware he came forward to City HR." (*Id.* ¶ 55.)

Avalos requested Plaintiff "send her an email with both Captains' Lists from 2021

and 2023." (*Id.* ¶ 54.) That same day, Plaintiff sent Avalos the requested lists. (*Id.*) It

took Avalos "almost 3 weeks to return correspondence," and she stated "she had been busy

'but would dig into this later this week.'" (*Id.* ¶ 56.) Avalos, however, "never contacted

the Plaintiff again." (*Id.* ¶ 57.)

#### 6. Union Obfuscation

On July 7, 2023, "Union President Bryan Willingham refused to allow Plaintiff to

grieve his scoring issues, stating 'what am I supposed to do, go to the city and say one of

my guy's feelings [\*8] are hurt?'" (*Id.* ¶ 58.) "Mr. Willingham threatened Plaintiff, stating that

'if you have a list scrapped, good luck with that out there.'" (*Id.* ¶ 59.)

On October 27, 2023, "Willingham called Plaintiff and berated him, stating he

would never promote Plaintiff if he was on his board because Plaintiff was uneducated, did

not know how to speak and rambled." (*Id.* ¶ 60.) "Mr. Willingham is the President of

Local 493, and this organization is a non-punitive organization against its members, even

though he went to the Fire Chief and HR Chief Paul Moore and attempted to get

management to interfere in a union election and get the Plaintiff disciplined." (*Id.*)

On June 21, 2024, "Union Trustees Chris Murphy and Keith Rogers conducted a

'Union Blitz' in front of sixteen plus co-workers at Station 19, calling Plaintiff a 'fucking

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asshole' and falsely stating he was offered and declined a union position." (*Id.* ¶ 61.)

On December 10 and 11, 2024, "Chris Murphy was calling fire stations in Phoenix

and telling the crews to watch the Senate Hearing featuring the Plaintiff and other

witnesses. Chris Murphy gave out the link to watch the hearing remotely. Chris Murphy

was sent by the Union to disparage Plaintiff [\*9] publicly at the Arizona State Capitol

Committee Hearing in a call to the public." (*Id.* ¶ 62.) Plaintiff further alleges that

"Arizona State Senator Jake Hoffman informed Plaintiff that his Union had sent questions

and information to other Senate staff to humiliate and discredit Plaintiff and other

firefighters that were scheduled to speak on the discriminatory practices at the Phoenix Fire

Department." (*Id.* ¶ 63.)

#### 7. Hostile Work Environment

On July 21, 2024, Captain Chris Murphy "told Plaintiff he was 'The Station

Captain' and could have Plaintiff removed from the airport at any time, threatened Plaintiff,

and told him he will not stop using Plaintiff's name in public union meetings, because if

he says what he says to the Plaintiffs face, he can say statements publicly." (*Id.* ¶ 65.)

On August 16, 2024, "Battalion Chief Rustin Eikleberry made derogatory and false

statements about the Plaintiff's discrimination claim and his intentions at Station 41 in front

of ten co-workers at dinner." (*Id.* ¶ 66.)

On December 27, 2024, Captain Murphy "used his access to Telestaff scheduling

software to move firefighters around, moving his 'buddies' into better positions while

disadvantaging Plaintiff." (*Id.* [\*10] ¶ 67.)

"From 2023 through 2025, Plaintiff repeatedly contacted South Deputy, Battalion

Chief Teddy Furlis, requesting not to be sent to the

airport due to the hostile work environment created by Mr. Murphy and others." (*Id.* ¶ 68.)

### 8. Retaliatory Conduct

On March 3, 2024, "Captain Mike Maciel asked Plaintiff if he was going to bring

the department down with a lawsuit because a Chief had confided in him about Plaintiff's

Attorney General complaint, which had not been made public." (*Id.* ¶ 69.)

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On April 14 and 17, 2024, "Plaintiff was denied water tanker/tender qualification

despite completing and passing the training on his off-duty days, unpaid, and in uniform,

while all other firefighters present received their qualifications." (*Id.* ¶ 70.)

On May 3, 2024, "Plaintiff was forced out of his position at Station 19 (ARFF

program) through the abnormal listing of his position as a temporary vacancy, but allowing

a captain to move shifts to displace Plaintiff." (*Id.* ¶ 71.)

On July 23, 2024, "Plaintiff was offered a Firefighter Paramedic B Shift position

for which he had seniority, but the offer was rescinded in the same phone call due to a

'personal interpretation of policy.'" (*Id.* ¶ 72.)

On September [\*11] 28, 2024, "Chief Molitor slammed the phone down and hung up on

Plaintiff who had called South Deputy to get his assignment for the day. Chief Molitor

saw the Plaintiff's supervisor, Captain Phil Johnson, and told him . . . he did not get hung

up on, 'that they are just too busy to say goodbye at South Deputy.'" (*Id.* ¶ 75.)

### II. Procedural History

On February 12, 2024, "Plaintiff filed a complaint with the Arizona Attorney

General's Office for discrimination and retaliation." 1 (Doc. 10 at 4.) "The Arizona Civil

Rights Division dismissed Plaintiff's complaint." (Doc. 1-1 ¶ 79.)

On September 3, 2024, Plaintiff filed an EEOC charge. (*Id.* ¶ 78.) On April 30,

2025, Plaintiff received a right-to-sue letter. (*Id.* ¶ 80.)

On July 28, 2025, Plaintiff filed suit in Maricopa County Superior Court. (Doc. 1-

1 at 2.) The complaint asserts six claims: (1) race discrimination in violation of 42 U.S.C.

§ 1981; (2) liability under *Monell* based on race discrimination (against Rideout only); (3)

race discrimination in violation of Title VII; (4) sex discrimination in violation of Title VII;

(5) retaliation in violation of Title VII; and (6) IIED. 2

In his response brief, Plaintiff clarifies that although he "inadvertently alleged [\*12] he

filed his complaint in January 2024 in the Complaint," he actually filed his complaint with the Arizona Attorney General's Office on February 12, 2024. (Doc. 10 at 4 & n.1.)

2 The complaint mistakenly labels both the second and third claim as "Count Two."

(Doc. 1-1 at 12-13.) For purposes of this order, the Court will refer to the second claim as

"Count Two-*Monell*" and the third claim as "Count Two-Title VII."

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On September 2, 2025, Defendants removed this action to federal court. (Doc. 1.)

On September 23, 2025, Defendants filed the pending motion to dismiss. (Doc. 8.)

That motion is now fully briefed. (Docs. 10, 11.) 3

### DISCUSSION

## I. Legal Standard

Under Rule 12(b)(6), "to survive a motion to dismiss, a party must allege sufficient

factual matter, accepted as true, to state a claim to relief that is plausible on its face." *In re*

*Fitness Holdings Int'l, Inc.*, 714 F.3d 1141, 1144 (9th Cir. 2013) (cleaned up). "A claim

has facial plausibility when the plaintiff pleads factual content that allows the court to draw

the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

(quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "[A]ll well-pleaded allegations of

material fact in the complaint are accepted as true and are construed in the light most

favorable to the non-moving party." [\*13] *Id.* at 1444-45 (citation omitted). However, the court

need not accept legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678-

80. Moreover, "[t]hreadbare recitals of the elements of a cause of action, supported by

mere conclusory statements, do not suffice." *Id.* at 678. The court also may dismiss due

to "a lack of a cognizable legal theory." *Mollett v. Netflix, Inc.*, 795 F.3d 1062, 1065 (9th

Cir. 2015) (citation omitted).

## II. Time-Barred Allegations

### A. The Parties' Arguments

Defendants argue that "[v]arious allegations in the Complaint must be stricken

because they are barred by the statutes of limitations." (Doc. 8 at 5.) As for Count One,

Defendants argue that Plaintiff "cannot rely on allegations from the 2021 Captain

Promotion Process" because "[a] claim filed pursuant to 42 U.S.C. § 1981 is subject to a

four-year statute of limitations" and "Plaintiff filed his

Complaint on July 28, 2025, so the

allegations regarding the 2021 Captain Promotion Process (which occurred prior to July

3 Defendants' request for oral argument is denied because the issues are fully briefed

and oral argument will not aid the decisional process. See LRCiv 7.2(f).

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2021) must be stricken from Count One." (*Id.*) As for Count Two-*Monell*, Defendants

argue that it "is subject to the two-year statute [\*14] of limitations set forth in the state's personal

injury statute of limitations," so "[a]ny allegations . . . in Count Two-*Monell* regarding

events prior to July 28, 2023 are barred. Thus, Plaintiff cannot allege facts regarding the

2021 Captain Promotion Process, communications in 2021, and the 2023 Captain

Promotion Process (including Plaintiff's 'evidence of list manipulation') to support his

*Monell* claim because all of these events occurred prior to July 28, 2023." (*Id.* at 6.) As

for Count Two-Title VII, Count Three, and Count Four, which are all brought under Title

VII, Defendants argue that such claims "must be filed with either the Equal Employment

Opportunity Commission ('EEOC') within 180 days, or with the Arizona Civil Rights

Division ('ARCD') within 300 days of the alleged unlawful employment practice" and

because "Plaintiff first filed a complaint with the Arizona Attorney General's Office in

January 2024 . . . to be timely, Plaintiff's Title VII claims . . . must have accrued within

300 days prior to January 2024, which bars any allegations prior to March 2023." (*Id.*)

Thus, "Plaintiff's Title VII claims regarding the 2021 Captain Promotion Process and all

subsequent communications regarding [\*15] that process are barred by the statute of limitations." the status of a current practice is at issue." (*Id.*, cleaned up.) Plaintiff argues that "[h]ere,

(*Id.*) As for Count Five, Defendants argue that an IIED all of the untimely allegations that Defendants seek to have stricken give rise to an

entity in Arizona must be filed within one year," so "any inference of unlawful discrimination *when combined with the timely allegations.*

encompassing events that occurred prior to July 28, 2024 must be stricken." (*Id.* at 7.) In Plaintiff's allegations regarding the 2021 Captain Promotion Process clearly relate to the

sum, Defendants argue that "[e]ach count is subject to the following limitations periods: allegations regarding the 2023 Captain Promotion Process insofar as both processes

Count One cannot be supported by allegations prior to July 28, 2021; Count Two-*Monell* involved alleged list manipulation and the alleged use of racial/gender factors in

cannot be supported by allegations prior to July 28, 2023; Counts Two-Title VII, Three, determining promotions. Plaintiff is thus allowed to use the untimely allegations as indirect

and Four cannot be supported by allegations prior to March 2023; and Count Five cannot proof of the City's intent to discriminate." (*Id.*) Plaintiff additionally argues that his

be supported by allegations prior to July 28, 2024." (*Id.*) "protected activity in October 2023 involved a complaint to HR regarding *both* the 2021

In response, Plaintiff does not dispute that the and 2023 Captain Promotion Process. Thus, [\*17] the allegations regarding the 2021 Captain

are untimely but argues the Court should still deny Defendants' request to strike "all Promotion Process are directly related to Plaintiff's retaliation claim." (*Id.*)

factual allegations from 2021 . . . from the Complaint,' for several reasons: (i) the Motion In reply, Defendants argue that "Plaintiff admits that the allegations regarding the

does not identify any statute or rule that authorizes the requested strike, as required by 2021 Captain Promotion Process are in fact untimely." (Doc. 11 at 3.) Defendants argue

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LR[C]iv 7.2(m)(1); (ii) the untimely allegations provide relevant background evidence in the following limitations periods: Count One cannot be supported by allegations prior to

support of Plaintiff's timely discrimination claims and [\*16] are directly related to Plaintiff's July 28, 2021, and Counts Two[-]Title VII, Three, and Four cannot be supported by

retaliation claim; and (iii) Defendants have not shown that the untimely allegations allegations prior to March 2023." (*Id.*) Defendants exclude Count Two-*Monell* and Count

constitute prejudice." (Doc. 10 at 7-8, citation omitted.) Citing *Lyons v. England*, 307 Five from this calculus because, as detailed below, Defendants argue that "Plaintiff has

F.3d 1092 (9th Cir. 2002), Plaintiff argues that "untimely evidence of the employer's abandoned these claims." (*Id.* at 3 n.2.) As for Plaintiff's argument regarding LRCiv

discriminatory acts may constitute relevant background evidence in a proceeding in which

7.2(m)(1), Defendants argue that Fed. R. Civ. P. 12(f) "authorizes the Court to strike from

a pleading 'any redundant, immaterial, impertinent, or scandalous matter.'" (*Id.* at 4.)

Defendants argue that "[u]ntimely allegations are both impertinent and immaterial because

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they cannot be relied upon to support Plaintiff's claims." (*Id.*) Defendants also argue that

"the untimely allegations must be stricken because they are [\*18] prohibited by the respective

statutes of limitations for each claim." (*Id.*) As for Plaintiff's argument that untimely

allegations may serve as background evidence, Defendants argue that "[i]ike in *Lyons*,

Plaintiff also cannot 'sustain a cause of action for relief from present injury caused by time-

barred acts of discrimination.'" (*Id.* at 4-5, citing *Lyons*, 307 F.3d at 1112.) Defendants

argue that "[t]he key difference between the evidence that the Ninth Circuit identified in

*Lyons* and the allegations offered by Plaintiff here is that the allowed 'background'

evidence in *Lyons* was limited to policy and statistical evidence, while Plaintiff's

allegations here relate to discrete acts of alleged discrimination." (*Id.* at 5.) Defendants

further argue that "[n]ot only are Plaintiff's untimely allegations unrelated to any policy or

statistical evidence, but Plaintiff's claims are also based on discrete acts of alleged

discrimination"-the 2021 Captain Promotion Process and the 2023 Captain Promotion

Process-yet "Plaintiff alleges absolutely no discrimination occurring in the year 2022

between these discrete Promotion Processes. Thus, these two occurrences are distinct, and

untimely allegations occurring [\*19] prior to the

limitations period . . . should not be relied upon

even as 'background evidence.'" (*Id.* at 6.) Finally, Defendants argue that they "are not

required to make a showing of prejudice to strike untimely allegations either under Fed. R.

Civ. P. 12(f) or Local Rule 7.2. . . . However, Defendants do face significant prejudice if

these allegations are not stricken, including increased discovery costs, confusion of the

issues to be actually litigated, and substantial increased use of this Court's time and

resources for facts that cannot support Plaintiff's claims." (*Id.*)

## B. Analysis

The parties agree, based on their shared understanding of the applicable statutes of

limitations, that any claim premised on conduct occurring before the following dates is

time-barred: Count One-July 28, 2021; Count Two-*Monell*-July 28, 2023; Counts Two-

Title VII, Three, and Four-April 18, 2023; 4 and Count Five-July 28, 2024. The dispute

Although Defendants argue that "Counts Two-Title VII, Three, and Four cannot be

supported by allegations prior to March 2023" (Doc. 8 at 7), Defendants' calculation is

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turns on whether Plaintiff may nevertheless rely on such untimely conduct to provide

background evidence in support of his [\*20] remaining, timely allegations.

Plaintiff is correct that he may rely on the untimely allegations for background

purposes. "So long as those allegations can be construed as 'background evidence,' and

that construction is favorable to Plaintiff, their presence may assist Plaintiff in staving off

a Rule 12(b)(6)-based dismissal attempt." *Bond v. Wells Fargo Bank NA*, 782 F. Supp. 3d

743, 755 (D. Ariz. 2025). Moreover, "any potential for mischief posed by the presence of

those allegations is mitigated by Plaintiff's concession in [his] response brief that [his]

complaint is only intended to state a claim for discrimination based on discrete acts of

discrimination that were timely included in [the complaint]." *Id.* Thus, Plaintiff is

permitted to plead time-barred discriminatory acts as background evidence.

There is no merit to Defendants' argument that the untimely allegations must be

stricken because "the allowed 'background' evidence in *Lyons* was limited to policy and

statistical evidence, while Plaintiff's allegations here relate to discrete acts of alleged

discrimination." (Doc. 11 at 5.) Although Defendants are correct that the background

evidence in *Lyons* related to policy and statistical evidence, *Lyons* does [\*21] not hold or suggest

that those are the only permissible categories of background evidence. *Lyons* holds that

"relevant evidence' is defined by Rule 401 of the Federal Rules of Evidence as evidence

having any tendency to make the existence of any fact that is of consequence to the

determination of the action more probable or less probable than it would be without the

evidence. In the context of a racial disparate treatment claim, admissible background

evidence must be relevant to determine the ultimate question: whether . . . the defendant

intentionally discriminated against the plaintiff because of his race." *Lyons*, 307 F.3d at

1110 (cleaned up). As a result, courts in the Ninth Circuit allow plaintiffs to include

"background evidence" that goes beyond policy and statistical evidence. See, e.g., *Bond*,

based on the allegation in the complaint that Plaintiff's charge with the Arizona Attorney

General's Office was filed in January 2024. (Doc. 1-1 ¶ 76.) But as noted above, Plaintiff's opposition brief clarifies that the charge was filed on February 12, 2024. (Doc. 10 at 4.)

Thus, the relevant cutoff date (after subtracting 300 days) is April 18, 2023 rather than March 2023.

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782 F. Supp. 3d at 753-55 (permitting "other discrete discriminatory [\*22] acts that occurred

more than 300 days before Plaintiff filed the Final Charge" to "serve as background

evidence"); *Walsh v. J.B. Hunt Transp. Inc.*, 2023 WL 1800962, \*4 (D. Ariz. 2023)

("Plaintiff's allegations related to the August 2019 corporate training session, Defendant

Adams' unannounced visit to Plaintiff's house in November 2020, Plaintiff's recovery

from COVID-19 in December 2020, or any other allegations that occurred prior to June

29, 2021 . . . may still be included in the Complaint to the extent they serve as 'background

evidence' in support of a timely claim for actionable discrimination."); *Brodus v. Mar. Inn*

& *Air Force Servs. Agency*, 2022 WL 2286476, \*11 (C.D. Cal. 2022) ("Even assuming

that certain of the allegations in the TAC concern matters that could not be advanced

because the claims are not timely, the allegations could still constitute prior acts of

discrimination that can be used 'as background evidence to support a timely claim.")

(citation omitted); *Griggs v. Sacramento City Unified Sch. Dist.*, 2021 WL 1614405, \*6

(E.D. Cal. 2021) ("[Plaintiff]'s allegations about Caucasian male comparators provide

relevant background and may have a 'possible bearing on the subject matter of the

litigation.' The motion to strike paragraph eight is denied.") (citation omitted); *Martinez*

*Patterson v. AT&T Servs. Inc.*, 2019 WL 5294532, \*4 (W.D. Wash. 2019) ("[E]ven though

Uday Shah's failure to promote Plaintiff occurred outside the statute of limitations [\*23] period,

a plaintiff may still use an employer's time-barred discriminatory act as background

evidence in support of her timely claims."). The Court will thus permit Plaintiff to use the

untimely allegations as background evidence, "but will proceed with the understanding that

they do not purport to set forth claims." *Bond*, 782 F. Supp. 3d at 755.

Defendants' references to Rule 12(f) do not compel a different conclusion. True,

under Rule 12(f), "[t]he court may strike from a pleading an insufficient defense or any

redundant, immaterial, impertinent, or scandalous matter." But the challenged allegations

here are not redundant, immaterial, impertinent, or scandalous-instead, they provide

background evidence that may support Plaintiff's timely claims. *Whittlestone, Inc. v.*

*Handi-Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010) (an allegation is "not immaterial" if it

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"relates directly to the plaintiff's underlying claim for relief" and is "not impertinent" if it

"pertains directly to the harm being alleged"). See also *De Markoff v. Superior Ct. of Cal.*,

2013 WL 1896259, \*5 (E.D. Cal. 2013) ("While it is true that the injuries occurring beyond

the limitations period are not actionable, . . . the statute of limitations does not bar an

employee from using prior acts as background evidence

in support of [\*24] a timely claim. Here,

Defendant seeks to have this court strike evidence of discrete acts beyond the limitation

period. The acts beyond the limitations period are not actionable but neither are they

redundant, immaterial, impertinent, or scandalous material warranting striking pursuant to

Fed. Rule Civ. Proc. 12(f).").

In a related vein, there is no merit to Defendants' request to strike "paragraphs 58

to 63 of the Complaint under the heading Union Obfuscation because these allegations are

immaterial to Plaintiff's claim against defendants." (Doc. 8 at 13 n.4.) Specifically,

Defendants argue that "conduct by the Union and its representatives cannot be imputed

onto the City" and that "[t]hese allegations have nothing to do with Plaintiff's claims

against either Defendant because the Union does not act on behalf of the City." (*Id.*)

To succeed on a Rule 12(f) motion to strike, the movant must generally show "that

the allegations being challenged are so unrelated to the plaintiff's claims as to be unworthy

of any consideration as a defense and that their presence in the pleading throughout the

proceeding will be prejudicial to the moving party." *Wright & Miller*, 5C Fed. Prac. and

Proc. § 1380 (3d ed., updated Nov. 2025). See also *XY Skin Care & [\*25] Cosms., LLC v. Hugo*

*Boss USA, Inc.*, 2009 WL 2382998, \*1 (D. Ariz. 2009) ("[A] Rule 12(f) movant not only

must demonstrate the allegedly offending material is redundant, immaterial, impertinent,

or scandalous, or constitutes an insufficient defense, but must also show how such material

will cause prejudice. . . . Any doubt concerning the redundancy, immateriality,

impertinence, scandalousness or insufficiency of all or part of a pleading must be resolved

in favor of the non-movant."). Defendants have failed to demonstrate how they will suffer

prejudice if the challenged allegations-which, by their own account, relate to a non-party

that is not empowered to act on their behalf-remain in the complaint. Moreover, at least

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at this early stage of the proceedings, the Court is not convinced that the challenged

allegations have no possible bearing on the subject of the suit.

### III. Count One (§ 1981 Claim Against The City)

The introductory paragraph of Defendants' motion states that Count One should be

dismissed "in its entirety." (Doc. 8 at 1.) However, Defendants do not repeat this argument

(or make any attempt to develop it) in the body of their motion.

In response, Plaintiff argues that he "has sufficiently pled a timely § 1981 claim

because Plaintiff alleged discriminatory [\*26] acts based on race within the four-year statute of

limitations." (Doc. 10 at 6.) Plaintiff argues that "[a]s Defendants note, allegations of race

discrimination that occurred on or after July 28, 2021, are timely for purposes of Plaintiff's

§ 1981 claim." (*Id.*) Plaintiff further argues that Defendants' "request completely ignores

the numerous remaining timely allegations supporting Plaintiff's § 1981 claim." (*Id.* at 7.)

In reply, Defendants only argue that "Count One cannot be supported by allegations

prior to July 28, 2021, pursuant to the statute of limitations. As such, Plaintiff's Count One

must be dismissed where it relies on untimely allegations." (Doc. 11 at 6-7.)

Defendants have failed to establish that Count One should be dismissed in its

entirety (and it is not clear, based on Defendants' briefing, whether Defendants are even

requesting such an outright dismissal). Moreover, as discussed above, Plaintiff may rely

on untimely allegations as background evidence in support of his § 1981 claim. Thus,

Defendants' motion to dismiss Count One is denied.

### IV. Count Two (*Monell* Claim Against Rideout)

#### A. **The Parties' Arguments**

Defendants argue that Count Two-*Monell* should be dismissed because "(1) it is

asserted against [\*27] an individual instead of a municipality, and (2) Plaintiff does not allege a

violation of a constitutional right." (Doc. 8 at 7.) As for the first point, Defendants

elaborate that "[Rideout] cannot be held liable in his individual capacity as alleged in Count

Two-*Monell* because *Monell* claims only are asserted to hold municipalities liable for the

actions of individuals, not to hold individuals liable for municipalities' actions." (*Id.* at 8.)

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Defendants argue that "Plaintiff alleges that [Rideout] was a policymaker who oversaw

promotions for the City of Phoenix Fire Department. However, this is not a sufficient basis

to hold Mr. Rideout liable under *Monell* because he is not the municipality. Therefore,

Plaintiff's *Monell* claim must fail and be dismissed with prejudice." (*Id.*, citation omitted.)

As for the second point, Defendants contend that "the statute of limitations for *Monell*

claims in this case is two years," so "the allegations Plaintiff may use to support his *Monell*

claim do not include the 2021 or 2023 Captain

Promotion Processes, since both occurred prior to July 28, 2023." (*Id.* at 9.) Defendants argue that "[e]ven if the Court considers the alleged events that occurred prior to [\*28] the limitations period, Plaintiff still fails to allege any underlying constitutional violation. . . . Plaintiff merely alleges that the promotion policies disadvantaged him because he is white and male, and that consideration of race and gender prevented him from being selected for a promotion. Even taking these alleged facts at their face value, they do not rise to the level of a constitutional violation." (*Id.* at 9, citation omitted.) Defendants also argue that "[i]f the Title VII claims in Count Two-Title VII, Count Three and Count Four are asserted against [Rideout], they must be dismissed because individual supervisors cannot be held liable for Title VII violations," and "if the IIED claim in Count Five is asserted against [Rideout], it should be dismissed for failure to state a claim." (*Id.* at 7-8.) Defendants argue that "[a]lthough Plaintiff has only named [Rideout] in the *Monell* claim, Plaintiff should be barred from amending the Complaint to name [Rideout] as a defendant in any other claims." (*Id.* at 10.) Plaintiff makes no arguments in response. (See *generally* Doc. 10.) In reply, Defendants argue that "the Court may construe the plaintiff's failure to respond as consent to granting [\*29] the motion." (Doc. 11 at 2.) Defendants argue that Plaintiff's response "makes no mention of his Count Two-*Monell* claim or any other theory of liability against [Rideout] in his individual capacity. Plaintiff's Count Two-*Monell* was the only claim alleged against [Rideout], so dismissal of

that claim also requires dismissal of [Rideout] as a party." (*Id.* at 2-3.)

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## B. Analysis

Although Count Two-*Monell* could be dismissed for an array of reasons, the most

fundamental problem-which Plaintiff failed to address in his response-is that it is only

asserted against Rideout in his individual capacity and is not asserted against the City. To

be clear, it is possible to assert a § 1983 claim against a supervisor in his individual

capacity. See *generally Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) ("A defendant

may be held liable as a supervisor under § 1983 if there exists either (1) his or her personal

involvement in the constitutional deprivation, or (2) a sufficient causal connection between

the supervisor's wrongful conduct and the constitutional violation. A plaintiff must show

the supervisor breached a duty to plaintiff which was the proximate cause of the injury.

The law clearly allows actions against supervisors under section 1983 as long as a sufficient

causal [\*30] connection is present and the plaintiff was deprived under color of law of a federally

secured right.") (cleaned up). But such a claim is different from a *Monell* claim, which is

a mechanism for suing a municipal defendant. A municipal employee's conduct may

"constitute[] an *element* of a *Monell* claim," but "*Monell* liability is limited to the 'acts of

the municipality.'" *Lockett v. Cnty. of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020)

(citing *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986)). See also *Guillory v. Orange*

*Cnty.*, 731 F.2d 1379, 1382 (9th Cir. 1984) ("*Monell* does not concern liability of individuals acting under color of state law."). Thus, Plaintiff's attempt to assert a *Monell* claim solely against Rideout in his individual capacity must fail. *See, e.g., Reason v. City of Richmond*, 2021 WL 107225, \*5 (E.D. Cal. 2021) ("Plaintiffs attempt to sue Chief Williams and Chief French in their individual capacities under *Monell*, but a *Monell* claim may be brought only against a municipality, not an individual."); *Tingirides v. Cal. Dept. of Corr. & Rehab.*, 2020 WL 4904661, \*10 (C.D. Cal. 2020) ("Defendants are correct that Defendant Borders cannot be liable under a *Monell* theory of liability. . . . The *Monell* doctrine does not apply to Defendant Borders, a state official, sued in his individual capacity."); *Mendez v. Becher*, 2012 WL 12920630, \*1 (N.D. Cal. 2012) ("Plaintiff's third cause of action is predicated on liability established under *Monell* . . . , which provides for

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municipal liability [\*31] where there is a custom or policy causing the harm to plaintiffs. It does not establish individual liability such as that of Chief Becher in her individual capacity.").

V. Count Five (IIED Claim Against The City)

**A. The Parties' Arguments**

Defendants argue that Count Five "must be dismissed because Plaintiff cannot satisfy the required elements of the claim." (Doc. 8 at 11.) Defendants argue that "[t]o state a cognizable claim of IIED under Arizona law, a plaintiff must prove three required elements: first, the conduct by the defendant must be extreme and outrageous; second, the defendant must either intend to cause emotional distress or recklessly disregard the near certainty that such distress will result from his conduct; and third, severe emotional distress must indeed occur as a result of the defendant's conduct." (*Id.*, cleaned up.) Defendants argue that Count Five fails to satisfy the first and second elements because "(1) [Plaintiff] has not alleged any extreme and outrageous conduct by the City, and (2) [Plaintiff] has not alleged that [the City]'s actions purposely or recklessly caused his emotional distress." (*Id.*) As for the first element, Defendants elaborate that the statute of limitations [\*32] confines Count Five "to facts occurring after July 28, 2024" and "there are almost no allegations in the Complaint that support Plaintiff's IIED claim against either Defendant." (*Id.* at 11-12.) Citing *Mintz v. Bell Atl.Sys. Leasing Int'l, Inc.*, 905 P.2d 559 (Ariz. Ct. App. 1995), Defendants argue that a failure to give a work promotion "does not go beyond all possible bounds of decency, even if it was motivated by sex discrimination or retaliation" and that "it is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of [IIED]." (*Id.* at 12.) Defendants add that "Plaintiff's claims of retaliation do not rise to the level of outrageousness either." (*Id.* at 12-13.) As for the second element, Defendants elaborate that "Plaintiff has not alleged facts to show that the Defendants acted purposefully or recklessly in supposedly causing his extreme emotion distress." (*Id.* at 13.) Plaintiff makes no arguments in response. (*See generally* Doc. 10.)

In reply, Defendants argue that "[b]ecause Plaintiff has not opposed dismissal of

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Count Five . . . he agrees to dismiss [it]." (Doc. 11 at 3.)

## B. Analysis

Under Arizona law, an IIED claim has three elements: "First, the conduct [\*33] by the

defendant must be extreme and outrageous; second, the defendant must either intend to

cause emotional distress or recklessly disregard the near certainty that such distress will

result from his conduct; and third, severe emotional distress must indeed occur as a result

of defendant's conduct." *Citizen Publ'g Co. v. Miller*, 115 P.3d 107, 110 (Ariz. 2005)

(cleaned up).

"A trial court is to act as a gatekeeper to determine whether the alleged actions are

'so outrageous in character and so extreme in degree, as to go beyond all possible bounds

of decency, and to be regarded as atrocious and utterly intolerable in a civilized

community." *Morgan v. Freightliner of Arizona, LLC*, 2017 WL 2423491, \*8 (D. Ariz.

2017) (quoting *Mintz*, 905 P.2d at 563). "[T]he Court need not determine whether

Defendants' conduct was outrageous enough to create liability, only whether reasonable

persons could differ as to whether the conduct is 'extreme and outrageous.'" *Id.*

"[C]onduct necessary to sustain an intentional infliction claim falls at the very extreme

edge of the spectrum of possible conduct." *Reel Precision, Inc. v. FedEx Ground Package*

*Sys., Inc.*, 2016 WL 4194533, \*2 (D. Ariz. 2016) (quoting *Watts v. Golden Age Nursing*

*Home*, 619 P.2d 1032, 1035 (Ariz. 1980)). "It 'must

completely violate human dignity.

The conduct must strike to the very core of one's being, threatening to shatter the frame

upon which one's emotional fabric is hung." [\*34] *Id.* (quoting *Pankratz v. Willis*, 744 P.2d

1182, 1189 (Ariz. Ct. App. 1987)). Additionally, Arizona courts have held that "[i]t is

extremely rare to find conduct in the employment context that will rise to the level of

outrageousness necessary to provide a basis for recovery for the tort of intentional infliction

of emotional distress." *Mintz*, 905 P.2d at 563 (quoting *Cox v. Keystone Carbon Co.*, 861

P.2d 390, 395 (3d Cir. 1988)). See also *id.* ("We readily agree with the trial court that Bell

Atlantic's failure to promote Mintz does not 'go beyond all possible bounds of decency,'

even if it was motivated by sex discrimination or retaliation.").

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The Court agrees with Defendants that the complaint fails to allege the sort of

"extreme and outrageous" conduct necessary to support an IIED claim under Arizona law.

As Defendants correctly note, the statute of limitations confines Plaintiff's IIED claim to

acts occurring after July 28, 2024. Thus, the claim may only be premised on the allegations

that "[o]n August 16, 2024, Battalion Chief Rustin Eikleberry made derogatory and false

statements about the Plaintiff's discrimination claim and his intentions at Station 41 in front

of ten co-workers at dinner" and that "[o]n December [\*35] 27, 2024, [Chris Murphy] used his

access to Telestaff scheduling software to move firefighters around, moving his 'buddies'

into better positions while disadvantaging Plaintiff." (Doc. 1-1 ¶¶ 66-67.) That conduct

does not qualify as the sort of "extremely rare," "atrocious and utterly intolerable" conduct,

*Mintz*, 905 P.2d at 563, that "completely violate[s] human dignity . . . [and] strike[s] to the

very core of one's being, threatening to shatter the frame upon which one's emotional

fabric is hung." *Pankratz*, 744 P.2d at 1189 (citation omitted). Courts have not hesitated

to reject employment-related IIED claims under analogous circumstances. *See, e.g., Mintz*,

905 P.2d at 563-64 (employer failed to promote the plaintiff, forced her to return to work,

and informed her, via a letter delivered to her hospital bed where she was being treated for

severe emotional problems, that her job duties had been reassigned); *Nelson v. Phoenix*

*Resort Corp.*, 888 P.2d 1375, 1386 (Ariz. Ct. App. 1994) (employer used an armed security

team to escort the plaintiff out of the premises in middle of night, allowed the plaintiff to

use the bathroom on the way out only if accompanied into the stall by armed escorts, and

fired the plaintiff in the lobby in front of coworkers and the media); *Pontikis v. Lucid USA*

*Inc.*, 2023 WL 6127693, \*3 (D. Ariz. 2023) ("Plaintiff [\*36] sets forth the retaliatory acts which

he alleges resulted in intentional infliction of emotional distress. They include: being

passed up for a promotion, being publicly reprimanded, prohibiting one other Lucid

employee from speaking with Plaintiff, making negative comments about him to other

employees, expressing an intent to terminate Plaintiff to his co-employees, and ostracizing

him from work-related conversations. To be sure, these allegations, which do amount to a

retaliation claim, do not amount to a claim for the intentional infliction of emotional

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distress as a matter of law."); *Reel Precision*, 2016 WL 4194533 at \*3 (employer forced

employees to perform a public "walk of shame" after failing to correctly perform their job

responsibilities); *Henson v. Air Nat. Guard Air Force Rsv. Command Test Ctr.*, 2007 WL

2903993, \*12 (D. Ariz. 2007) (employer subjected plaintiff to an abusive five-hour long

meeting, created an unpleasant work environment in which plaintiff was threatened that

she would lose her job, and ignored several of plaintiff's requests for assistance) .5

#### VI. Punitive Damages

Defendants also move to dismiss Plaintiff's request for punitive damages. (Doc. 8

at 14-15.) Plaintiff [\*37] does not respond. (*See generally* Doc. 10.)

Count Two-*Monell*, which has now been dismissed, is the only claim that included

an express demand for punitive damages. (Doc. 1-1 ¶ 103.) However, Plaintiff's prayer

for relief also appears to assert an undifferentiated claim for punitive damages. (*Id.* at 16.)

Regardless, to the extent Plaintiff is seeking punitive damages based on his remaining

claims against the City that have not been dismissed-Counts One, Two-Title VII, Three,

and Four-the Court agrees with Defendants that punitive damages are unavailable.

As for Count One, although the Ninth Circuit has left open the question "[w]hether

punitive damages are available at all under [§] 1981 where the defendant is a municipality,"

*White v. Washington Pub. Power Supply Sys.*, 692 F.2d 1286, 1290 (9th Cir. 1982), many

district courts within this circuit have held that punitive damages are not available in this

circumstance. See, e.g., *Harvey v. City of San Diego*, 2009 WL 10671672, \*3 (S.D. Cal.

2009) ("Nor are punitive damages available against municipalities under [§] 1981 . . . .");

*Henry v. Portland Dev. Comm'n*, 2007 WL 3125309, \*22 (D. Or. 2007) ("[T]he law does

not allow an assessment of punitive damages against a municipality in a [§] 1981 claim.");

*Kaulia v. Cnty. of Maui*, 2006 WL 4660130, \*6 (D. Haw. 2006) ("As to the Plaintiff's

claim for punitive damages pursuant to § 1981, the Supreme Court has held that a

municipality is immune from punitive damages under 42 U.S.C. § 1983, . . . and the Court's [\*38]

5 This conclusion makes it unnecessary to address Defendants' arguments regarding

the second IIED element.

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rationale applies equally to § 1981 actions.") (cleaned up). See also *Walters v. City of*

*Atlanta*, 803 F.2d 1135, 1148 (11th Cir. 1986) ("[T]he district court correctly disposed of

Walters' [§ 1981-based] punitive damages claims against the City."); *Bell v. City of*

*Milwaukee*, 746 F.2d 1205, 1270 (7th Cir. 1984) (same); *Poolaw v. City of Anadarko, Okl.*,

738 F.2d 364, 367 (10th Cir. 1984) (same); *Heritage Homes of Attleboro, Inc. v. Seekonk*

*Water Dist.*, 670 F.2d 1, 3 (1st Cir. 1982) (same). The Court is persuaded by these

authorities and therefore concludes that Plaintiff may not seek punitive damages based on

his § 1981 claim.

Plaintiff is also barred from seeking punitive damages against the City based on his

remaining Title VII claims. "42 U.S.C. § 1981 a(b)(1) provides that a party may recover

punitive damages under Title VII against any defendant 'other than a government,

government agency, or political subdivision.'" *Reed v. City of Culver City*, 2020 WL

7315016, \*4 (C.D. Cal. 2020). See also *Harvey*, 2009 WL 10671672 at \*3 ("[P]unitive

damages are not available against municipalities in Title VII claims.").

#### VII. Leave To Amend

Defendants contend that Plaintiff's claims should be dismissed with prejudice and

without leave to amend. (Doc. 8 at 7, 8, 9, 10, 14.) In his response, Plaintiff does not

request leave to amend. (Doc. 10.) Nevertheless, [\*39] the rule in the Ninth Circuit is that "a

district court should grant leave to amend even if no request to amend the pleading was

made, unless it determines that the pleading could not possibly be cured by the allegation

of other facts." *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016).

The decision whether to grant leave to amend is governed by Rule 15(a) of the

Federal Rules of Civil Procedure, which "advises the court that 'leave [to amend] shall be

freely given when justice so requires.'" *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d

1048, 1051 (9th Cir. 2003). "This policy is 'to be applied with extreme liberality.'" *Id.*

(citation omitted). Thus, leave to amend should be granted unless "the amendment:

(1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay

in litigation; or (4) is futile." *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946,

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951 (9th Cir. 2006). Applying that standard, leave to amend Count Two-*Monell* against

Rideout is denied on futility grounds, as a *Monell* claim cannot be brought against an

individual defendant. The Court will, however, grant leave to amend as to Count Five and

as to any punitive damage claim premised on Count Five.

Accordingly,

**IT IS ORDERED** that:

1. Defendants' motion to dismiss (Doc. 8) is **granted in part and denied in**

**part** [\*40]. The only claims being dismissed are Count Two-*Monell*, Count Five, and Plaintiff's

request for punitive damages.

2. Plaintiff may file a First Amended Complaint ("FAC") within 14 days of the

issuance of this order. Any changes shall be limited to attempting to rectify the deficiencies

identified in this order as to which leave to amend was granted. Plaintiff shall, consistent

with LRCiv 15.1, attach a redlined version of the pleading as an exhibit.

3. Rideout is dismissed as a defendant.

Dated this 9th day of March, 2026.

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